
INTEREST ARBITRATION APPEAL DECISIONS

Public Employment Relations Commission

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With the adoption of the 1996 Police and Fire Public Interest Arbitration Reform Act, *P.L.* 1995, *c.* 425, the Legislature gave the Commission, rather than Superior Court, jurisdiction to decide appeals from interest arbitration awards. Since that time, the Commission has issued 15 decisions reviewing final interest arbitration awards, as well as five decisions concerning procedural matters. The following is a summary of some of the key principles and holdings set forth in the Commission's interest arbitration appeal decisions to date.

I. COMMISSION REVIEW OF INTEREST ARBITRATION AWARDS

! Standard of Review

Because the Reform Act changed the forum, rather than the standards, for reviewing interest arbitration awards, the Commission will apply the standard set forth in pre-Reform Act case law. Accordingly, the Commission will vacate an award only if an appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the section 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in *N.J.S.A.* 2A:24-8 or -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. This standard was first set out in *Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287* (¶28131 1997) and has been reiterated in all Commission interest arbitration appeal decisions.

! Deference to Arbitrator

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act vests the arbitrator with the responsibility to weigh the evidence and fashion an award. The Commission will not disturb the arbitrator's exercise of discretion in weighing the evidence unless the appellant demonstrates that the arbitrator did not adhere to the standards in the Reform Act or the Arbitration Act or shows that the award is not supported by substantial credible evidence in the record as a whole. *Cherry Hill*.

! Review of Arbitrator Rulings on Non-Salary Proposals

Where an appeal challenges an arbitrator's ruling on a non-salary proposal to change an employment condition, the Commission will consider whether the arbitrator applied the traditional arbitration principle that the party proposing a change must justify it. *Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450* (¶30199 1999), *app. pending, Dkt. No. A-1850-99T1*. Application of that standard is particularly important where, as in *Teaneck*, one party proposed to change a work schedule that had been in effect since 1970 and had implications for the overall management and operations of the fire department.

! Appellant's Obligations

An arbitrator is required to provide a reasoned explanation for an award and, once he or she does so, an appellant must offer a particularized challenge to the arbitrator's analysis and conclusions. *Cherry Hill; Borough of Lodi*, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998); *City of Newark*, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999).

An appellant cannot attack an opinion in the abstract. An appellant should identify the analytical deficiencies that resulted in those aspects of the award adverse to its position. *Cherry Hill; see also Middlesex Cty.*, P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997)(employer's challenge to analysis of "continuity and stability of employment" criterion was without merit where arbitrator accepted employer's argument that the unit had stable employment).

! Commission Authority to Modify Salary Awards

While the Commission has the statutory authority to modify awards, determining salaries requires an analysis and weighing of all the evidence submitted on all the statutory factors and should be made in the first instance by an arbitrator. *See Borough of Bogota*, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998)(declining to modify salary increases awarded; vacating award; and consolidating matter with another interest arbitration proceeding).

II. ARBITRATOR'S ROLE AND SCOPE OF AUTHORITY

! Mediation by Interest Arbitrators

Mediation is integral to the interest arbitration process and arbitrators are encouraged to assist the parties in trying to reach a settlement. *Teaneck*. But when an arbitrator's written "mediator's recommendations" did not result in a settlement, the arbitrator could, in his discretion, seek to withdraw from the case and the Commission's Director of Arbitration reasonably exercised his discretion in approving the request. *Teaneck*.

! Determining Salary Increases

Fashioning a conventional arbitration award is not a precise mathematical process. *Borough of Allendale*, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment, discretion and labor relations expertise. *See, e.g., Lodi; Newark*. Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. *Lodi*. However, the arbitrator should state what statutory factors he or she considered most important in arriving at the award, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered. *Lodi*.

! Review of Work Schedule Proposals

In reviewing a proposal to change a work schedule, the Commission will consider whether an arbitrator applied the traditional arbitration principle that the party proposing a change must justify it. Before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions. *Teaneck*. In addition, an arbitrator may not award a proposal that would result in different schedules for supervisors and rank-and-file employees unless he or she finds that the different work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns. *See Teaneck* (Commission affirmed award of 24/72 work schedule with the modification that the schedule shall not be implemented unless and until a 24/72 schedule is agreed to or awarded with respect to the fire officers' unit).

! Award of Work Schedule Proposal – Establishment of Trial Period

Where a work schedule change was awarded because of potential benefits, as opposed to problems with an existing schedule, it was appropriate for the arbitrator to establish a trial period to ensure that the awarded schedule will not become the new status quo unless the predicted benefits materialize. *Teaneck*. However, a trial period must clearly provide that a new work schedule will not become part of the status quo for successor contract negotiations. *See Teaneck* (Commission clarified that new schedule will not be continued into the agreement that follows completion of the trial period unless there is a mutual agreement to do so, or an interest arbitrator awards the schedule anew). *Note: Teaneck also held that the schedule awarded by the arbitrator on a trial basis for a firefighters' unit shall not be implemented unless the same schedule is agreed to or awarded with respect to the fire officers' unit.*

! Authority to Award Items Not Proposed by Parties

The conventional arbitration terminal procedure gives the arbitrator authority to resolve "all unsettled items." While the arbitrator may not reach out to decide issues not raised by the parties, he or she may award an item not proposed by either party if it is subsumed within a final offer. *See Cherry Hill* (issue of appropriate starting salary was subsumed within larger issue of across-the-board increases, and arbitrator could therefore freeze starting salary although neither party had proposed a freeze; however, arbitrator had no authority to award change in biweekly pay date, since that issue was not subsumed within either party's proposal).

Where there are several points of disagreement between the parties, an arbitrator may evaluate the relationship among, or the combined effect of, the different proposals in arriving at an award. The arbitrator may then fashion an award that represents a reasonable determination of all the issues in dispute. An award is not necessarily flawed because, in making this overall determination, the arbitrator goes outside the boundaries of the parties' positions on one of the issues in dispute. *See Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997)* (where disputed issues were across-the-board increases and an automatic step system, arbitrator could decide to award some step advancement and some across-the-board salary increases; in fixing salary increases he could take into account step advancement awarded and order a salary increase that,

for one year of the agreement, was lower than that proposed by either party). *Note: Hudson did not decide whether, if confronted only with competing proposals for across-the-board increases, an arbitrator would be prohibited from awarding increases lower (or higher) than proposed by either party.*

! Authority to Award Salary Structure for a Negotiations Unit

An arbitrator has the statutory authority to award a compensation and benefits package, and salary structure, for a negotiations unit. An arbitrator does not exceed that authority because some elements of a package or salary structure may not apply to any individual employee during the term of the agreement. Given that the parties to an interest arbitration proceeding have an ongoing relationship, there is no prohibition against such provisions, which are part of the compensation and benefits structure that will govern the parties' future relationship absent subsequent agreements or awards. *Newark.*

! Obligation to Resolve All Unsettled Issues

An arbitrator has the responsibility to resolve all unsettled issues and cannot presume that interest arbitration is an inappropriate forum for granting, modifying or denying a benefit. However, an arbitrator may require that a party requesting a contract change explain the need for it. *See Cherry Hill* (remanding award where arbitrator expressed view that health benefit changes should not be awarded in interest arbitration).

! Analysis of Statutory Criteria

An arbitrator is not required to apply every statutory criterion to every facet of every proposal. *N.J.S.A. 34:13A-16g* requires an arbitrator to "decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute." This language gives an arbitrator the discretion to decide that a particular dispute is best analyzed by applying the relevant statutory factors to a cluster of related issues. However, an arbitrator must also analyze all of the arguments and evidence presented concerning a particular proposal. *Cherry Hill.*

An arbitrator should state what statutory factors he or she considered most important in arriving at the award, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered. *Lodi.*

III. STATUTORY FACTORS

! Public Interest and Welfare

While *N.J.S.A. 34:13A-14(b)* states that the interest arbitration process should give due weight to the interests of the taxpaying public, the Reform Act does not require that the arbitrator award the amount the employer has budgeted for wage increases, automatically equate the employer's offer with the public interest, or specify a formula for arriving at an award. *Middlesex.*

In analyzing the public interest criterion, an arbitrator may appropriately consider the public interest in maintaining a high-productivity and high-morale work force. *Middlesex*.

The Commission has approved an arbitrators' view of the public interest as a broad criterion that encompasses considerations of both fiscal responsibility and the compensation package required to maintain a high-productivity and high-morale fire department. *Teaneck*.

! Comparability

- **Internal Patterns or Settlements**

An arbitrator properly considered an internal settlement involving the employer's non-uniformed employees, but he was not required to give dispositive weight to the fact that it was stated in dollar amounts rather than percentage increases. The arbitrator reasonably concluded, based on all of the evidence, that a higher award was appropriate. *Middlesex*; see also *Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421 (¶29195 1998)*(arbitrator awarded health benefits proposal that pertained to all university employees, but was not required to give dispositive weight to the dollar-amount increases included in university's agreements with other non-faculty employees).

The decision to place significant weight on the increases received by the employer's other public safety employees is consistent with the Reform Act, which requires the arbitrator to compare the salaries of employees performing the same or similar services in the same jurisdiction. *N.J.S.A. 34:13A-16g(2)(c); N.J.A.C. 19:16-5.14(c)*. In a particular proceeding, an arbitrator may determine that that subfactor is important, especially where a strong internal pattern exists. *Teaneck*.

- **Commission Comparability Guidelines**

The Commission's comparability guidelines, *N.J.A.C. 19:16-5.14*, are instructive, not exhaustive, and are intended to assist the parties and the arbitrator in focusing on the types of evidence that may support comparability arguments. They did not require that university police be compared only to other college police. *Rutgers*.

- **Employees Performing the Same or Similar Services in the Same or Similar Comparable Jurisdictions**

Interest arbitration record supported arbitrator's conclusion that university police were most comparable to municipal police in the same county. While comparison with other college and university police officers would also have been appropriate, the lack of specific discussion concerning those officers did not, based on the record, undermine the arbitrator's award. *Rutgers*.

An arbitrator properly considered evidence that police officers in major cities had lower salaries than the officers involved in the proceeding. But he was not compelled to award the employer's offer where he concluded that the salaries of police officers in the county were more relevant and found, in effect, that the salaries of city officers were depressed by their employers' serious financial problems. *Allendale, P.E.R.C. No. 98-123*.

- **Private Sector Employment**

By directing a comparison with private-sector employees “in general,” *N.J.S.A. 34:13A-16g(2)* deems that information concerning private-sector employees should be considered even though their work may not be similar to that of police or fire officers. *See Bogota Bor., P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998)*(Commission vacated and remanded award where arbitrator “seriously doubted” whether he should give any “real consideration” to the NJDOL’s private-sector wage report, prepared at the Commission’s request, pursuant to *N.J.S.A. 34:13A-16.6*).

Commission would not disturb arbitrator’s judgment to give more weight to the New Jersey Department of Labor’s report on average private-sector wages changes than to evidence of nationwide private-sector wage increases. *Allendale, P.E.R.C. No. 98-123*.

Arbitrator did not err in considering U.S. Department of Labor statistics on average wage increases for private-sector supervisory employees. Because *N.J.S.A. 34:13A-16g(2)* calls for, among other things, a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees in “private employment in general,” the arbitrator could consider the information even though the private-sector employees may have had different working conditions from the superior police officers involved in the proceeding. *Town of Newton, P.E.R.C. No. 98-47, 23 NJPER 599 (¶28294 1997)*.

! Financial Impact

- **Impact on Programs on Services**

N.J.S.A. 34:13A-16g(6) requires an arbitrator to consider the impact of the award on existing or planned programs or services, the county tax rate, and property taxpayers of different income levels “to the extent that evidence is introduced.” Where no evidence is introduced on these items, an arbitrator need not consider them. *Middlesex; Newark; Teaneck*.

Arbitrator properly considered employer’s evidence that it had reduced or eliminated appropriations in certain areas, but the record supported his conclusion that these cuts did not, in light of all the financial evidence, indicate fiscal distress. *Allendale, P.E.R.C. No. 98-123*.

- **Governing Body’s “Ability to Pay” an Award**

N.J.S.A. 34:13A-16g(6) does not require an employer to prove its inability to meet the other party’s offer. *Newton*. An interest arbitration award must be based on an analysis of all the relevant statutory factors and will not be vacated because a fiscally healthy employer did not demonstrate that it could not pay for the other party’s offer. *Newton*.

- **Financial Health of Community**

While financial health is not a basis for awarding increases higher than are warranted under the statutory criteria, it is relevant to assessing whether an entity can fund an award that, based on all the criteria, the arbitrator finds to be reasonable. *Allendale, P.E.R.C. No. 98-123*.

- **Impact of an Award on Other Negotiations Units**

An arbitrator was not required to consider the financial impact that would result if the employer's other law enforcement units received similar awards, where the employer did not provide analyses or projections as to how various levels of potential awards, if applied to other units, would affect the employer financially. *Middlesex*. The Commission declined to consider an exhibit, submitted on appeal, estimating the cost to the employer if the award were applied to other units eligible for interest arbitration.

An arbitrator reasonably concluded that, if he awarded a union proposal for an automatic step system, other County units would try to obtain similar provisions which, if secured, could hurt the County's precarious finances. The Commission declined to disturb the arbitrator's exercise of discretion in giving some weight to this potential impact. *Hudson*.

- **Future Costs of Existing Salary Structure**

N.J.S.A. 34:13A-16d(2) directs an arbitrator to calculate the costs for each "year of the agreement," and does not automatically require the arbitrator to identify the costs (or savings) that may flow from the existing salary structure after the agreement expires. *Newark*. Those costs can be taken into account by the parties in future negotiations and must be taken into account by an interest arbitrator in future interest arbitration proceedings. *Newark*. While the future costs of an existing salary system may sometimes be relevant to evaluating the financial impact of an award, the employer in *Newark* did not show that the arbitrator's analysis of the financial impact criterion was flawed because he did assess the potential future costs of a senior pay step.

- **Analyzing the Cost of Parties' Proposals**

Where over three-fourths of unit was at the top step of the salary guide, arbitrator did not err in analyzing parties' final offers in terms of how they would affect the substantial majority of the unit. *Allendale, P.E.R.C. No. 98-123*.

IV. DETERMINATION OF TOTAL NET ANNUAL ECONOMIC CHANGES

The arbitrator must comply with the requirement in *N.J.S.A. 34:13A-16d(2)* to determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight criteria in section 16g. The arbitrator may refer to his analysis of the parties' proposals in determining whether the changes for each year are reasonable. *Cherry Hill*.

An arbitrator satisfies *N.J.S.A. 34:13A-16d(2)* if he or she identifies what new costs will be generated in each year of the agreement and figures the change in costs from the prior year rather than from the beginning of the contract. If the Legislature had intended to require that arbitrators calculate each year's new costs, plus the repeating costs from prior years of the award, it would not have directed them to determine the "annual economic changes" for "each" year of the award. *Rutgers*.

V. PROCEDURAL ISSUES

! Scope Of Negotiations Petitions

Employer was required to file a pre-arbitration scope petition if it sought to prevent an interest arbitrator from considering the union's work schedule proposal. *N.J.A.C. 19:16-5.5(c)*. But the employer could still argue in an appeal of an interest arbitration award that the arbitrator did not give enough weight to, or consider evidence concerning, such issues as the proposed work schedule's cost or its impact on department operations, discipline or supervision. *Teaneck*.

! Admission of Auditor's Budget Worksheets

The Commission denied special permission to appeal an interest arbitrator's interlocutory order requiring a municipality to produce budget worksheets prepared by its auditor in connection with the consideration and adoption of the municipal budget. The Commission found no basis to disturb the arbitrator's ruling that the worksheets were relevant to the cross-examination of the auditor. The arbitrator also correctly ruled that the union could have a right to the worksheets even if a member of the public might not be able to obtain them under statutes and case law governing access to public records. In declining special permission to appeal, the Commission did not decide that disclosure of municipal budget worksheets would be required in all circumstances. *Edison Tp., P.E.R.C. No. 98-124, 24 NJPER 221 (¶29104 1998)*.

! Arbitral Notice

The Legislature intended that the Commission's private-sector wage report, *see N.J.S.A. 34:13A-16.6*, would be used in arbitration proceedings and it was a proper subject of arbitral notice. *Allendale, P.E.R.C. No. 98-123*. However, it might have been preferable for the arbitrator to have notified the parties that he intended to take notice of the report, in order to give them an opportunity to object to its consideration or to offer their own analysis of it. *Allendale, P.E.R.C. No. 98-123*.

Arbitrator could take arbitral notice of Commission's private sector wage report even though parties had submitted other information concerning private sector wage increases. *Allendale, P.E.R.C. No. 98-123*.

! Final Offer

Commission declined to vacate award on grounds that, in submitting final offer, party referenced positions in mediation and did not restate those positions in a separate written document. Commission found that the other party was not prejudiced and that the concern about protecting the confidentiality of mediation discussions does not arise where a party adopts as its final offer a proposal put forward in mediation. However, *N.J.A.C. 19:16-5.7(f)* is intended to identify the proposals to be considered by the arbitrator and that objective is best achieved if each party puts the specific terms of its final offer in writing. *Borough of Bogota, P.E.R.C. No. 98-104*.

! Jurisdiction of Arbitrator

Challenges to an arbitrator's jurisdiction or the legal arbitrability of a proposal should be made in the time and manner prescribed by *N.J.A.C. 19:16-5.5(c)*, governing the filing of scope-of-negotiations petitions in connection with interest arbitration proceedings. ***Delran Tp., P.E.R.C. No. 99-86, 25 NJPER 166 (¶30076 1999)***.

An arbitrator may not grant a proposal that, by operation of law, would automatically affect employees over whom he has no jurisdiction. ***Delran; but see Borough of Matawan, P.E.R.C. No. 99-107, 25 NJPER 324 (¶30140 1999)***(interest arbitrator may award a change in employer payments for retiree health coverage that will take effect only when *N.J.S.A. 40A:10-23*'s requirement that all employees be treated uniformly is met).

Arbitrator may not issue any "finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with ... any governmental retirement system or pension fund" *N.J.S.A. 34:13A-18*. Therefore, arbitrator did not have jurisdiction to direct that holiday pay be included in base pay for pension purposes. However, he could order that it be included in base pay for purposes of calculating overtime. ***Delran***.

! Proposing Issues for Interest Arbitration

A party filing a petition to initiate compulsory interest arbitration is not obligated to list the other party's proposals in its petition: *N.J.A.C. 19:16-5.5* contemplates that the non-filing party will submit a response to the petition identifying any additional issues. ***Borough of Allendale, P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997)***

An arbitrator has the discretion to extend or relax the timelines in *N.J.A.C. 19:16-5.5*, specifying the time for identifying issues to be submitted to interest arbitration. The Commission will defer to the arbitrator's decision to admit or exclude additional issues unless the Commission finds an abuse of discretion. ***Middlesex. Note: The Commission has upheld arbitrator decisions not to consider late-submitted issues. Middlesex; Allendale, P.E.R.C. No. 98-27; Bogota, P.E.R.C. No. 98-104.***

Arbitrator committed reversible error by not ruling on objection to employer's submission of additional issues until he issued his final opinion and award: employer might have changed the proposals that were considered had it known that others would be excluded from the proceeding. ***Allendale, P.E.R.C. No. 98-27; Compare Bogota, P.E.R.C. No. 98-104*** (arbitrator ruling on submission of additional issues was timely where it was issued within three weeks of objection and before any evidence was presented or testimony taken).

Discussion of proposals during mediation cannot substitute for compliance with *N.J.A.C. 19:16-5.5*. ***Allendale, P.E.R.C. No. 98-27.***

! **Remand of Awards**

The Commission has generally remanded awards to the original arbitrator, expressing confidence that the arbitrator would reconsider the award in accordance with the Commission opinion. *See, e.g., Cherry Hill; Allendale, P.E.R.C. No. 98-27.*

! **Time for Issuing Awards**

Any extensions of time for issuing an award, *see N.J.S.A. 34:13A-16f(5)(a)*, must be in writing and filed with the arbitrator and the Director of Arbitration. *Cherry Hill; see also N.J.S.A. 34:13A-16f(5)(a); N.J.A.C. 19:16-5.9.*

The statutory goal of providing for an expeditious, effective and binding procedure for the resolution of disputes, *see N.J.S.A. 34:13A-14a*, would not be served by vacating a late award and starting proceedings all over again. *Cherry Hill; Rutgers.* However, failure to issue a timely award or observe proper extension procedures will be viewed seriously under *N.J.S.A. 34:13A-16e(2)*, pertaining to the discipline of arbitrators. *Rutgers.*

The common law rule that an arbitration award is null and void if made after the time set by agreement does not pertain to interest arbitration. *Rutgers.*

! **Requirements for Appealing Awards to Commission**

A notice of appeal must specify each alleged error in the arbitrator's analysis: where a notice is deficient, the Commission will not process the appeal unless the appellant promptly meets the specificity requirements in *N.J.A.C. 19:16-8.1. Newton.*

N.J.S.A. 34:13A-16f(5)(a) requires that a notice of appeal be filed within 14 days of a party receiving an award. In *Borough of Cliffside Park, P.E.R.C. No. 98-71, 24 NJPER 15 (¶29010 1997)*, the Commission denied a motion to file a late notice of appeal. Because the appellant did not present a particularized description of the reasons for its delay, the Commission declined to consider whether it would ever consider an appeal filed after the time specified in *N.J.S.A. 34:13A-16f(5)(a)*.